Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.	)	CC Docket No. 97-211

ORDER RULING ON JOINT OBJECTIONS

Adopted: July 17, 1998 **Released: July 17, 1998**

By the Chief, Policy and Program Planning Division:

1. On June 5, 1998, the Commission adopted a protective order that applies to any confidential documents provided by WorldCom, Inc. (WorldCom) and MCI Communications Corporation (MCI) in connection with the above-captioned application.[1] In the *Protective Order,* the Commission limited disclosure of confidential information to "outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making."[2] On June 12, 1998, WorldCom and MCI filed a joint objection to the disclosure of confidential information to Edward D. Young III and John Thorne, in-house counsel from Bell Atlantic, on the ground that they are involved in "competitive decision-making" for Bell Atlantic.[3] On June 17, 1998, WorldCom and MCI filed a joint objection to the disclosure of confidential information to several attorneys from Howrey & Simon and Kirkland & Ellis on the ground that these attorneys are not "outside counsel of

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[1] Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., *Order Adopting Protective Order*, CC Docket No. 97-211, DA 98-1072 (rel. Com. Car. Bur. June 5, 1998) (*Protective Order*).

[2] *Protective Order* at para. 3. Consistent with the standard adopted by federal courts, the Commission defined "competitive decision-making" as "counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor." *Id.*

[3] Joint Objection of WorldCom and MCI to Disclosure of Stamped Confidential Documents (filed June 12, 1998) (June 12th Joint Objection of WorldCom and MCI).

record" for GTE in this proceeding.[4] In addition, WorldCom and MCI assert that Richard W. Stimson and C. Daniel Ward, in-house counsel for GTE, are not eligible to review the confidential information because they are involved in "competitive decision-making" for GTE. For the reasons set forth below, we deny Edward D. Young III, John Thorne, Richard W. Stimson, and C. Daniel Ward access to the confidential information filed by WorldCom and MCI, and permit such access to the attorneys from Howrey & Simon and Kirkland & Ellis.

2. We find that Bell Atlantic has not rebutted the allegation that John Thorne and Edward D. Young III from Bell Atlantic, each of whom holds the title of "Senior Vice President & Deputy General Counsel," are involved in competitive decision-making. Although each of these attorneys submits a cursory affidavit stating that they function as lawyers in and for the company rather than as "business officers," we find that they do not adequately explain their roles as "Senior Vice President" for the company. Without such an explanation, it is difficult to fathom that a "Senior Vice President" of a company does not participate in competitive decision-making.[5] The mere assertion that they do not participate, without any type of substantiation, is insufficient. We therefore agree with WorldCom and MCI that the disclosure of "highly proprietary competitive information" to such in-house attorneys would pose an unacceptable opportunity for inadvertent disclosure.[6] We reject Bell Atlantic's argument that, by comparison to the various in-house counsel that were permitted access to confidential documents in the Bell Atlantic/NYNEX merger, "neither Mr. Young nor Mr. Thorne perform competitive decision-making roles at all."[7] We find this comparison to be irrelevant as the protective order in the Bell Atlantic/NYNEX merger proceeding did not limit disclosure of confidential information to those in-house counsel that are not involved in competitive decision-making as the Commission has done in the instant merger proceeding.

3. In addition, we permit Mr. Bradbury from Kirkland and Ellis, and Messrs. Flick and Schechter from Howrey & Simon access to the confidential information. Although we agree with WorldCom and MCI that the attorneys from Wiley, Rein & Fielding that have prepared and signed pleadings filed on behalf of GTE are counsel of record,[8] we disagree that

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[4] Joint Objection of WorldCom and MCI to Disclosure of Stamped Confidential Documents (filed June 17, 1998) (June 17th Joint Objection of WorldCom and MCI).

[5] In its Joint Objection, WorldCom and MCI attached a profile of Edward D. Young III that had been downloaded from Bell Atlantic's website on June 9, 1998. This profile stated that Mr. Young "is actively involved in significant and strategic decisions at Bell Atlantic and plays an important role in the technical development and management of the company." June 12th Joint Objection of WorldCom and MCI at Exhibit 1. We note that this language has been removed from the current version of Mr. Young's profile, which was updated on June 29, 1998.

[6] June 12th Joint Objection of WorldCom and MCI at 4.

[7] Opposition of Bell Atlantic to Joint Objection of WorldCom and MCI to Disclosure of Stamped Confidential Documents at 3 (filed June 18, 1998).

[8] June 17th Joint Objection of WorldCom and MCI at 2-3.

they are the *only* counsel of record for GTE. Rather, we find that the Commission's rules contemplate that counsel of record may include attorneys that are not identified as counsel on such documents. We disagree with WorldCom and MCI's assertion that section 1.52 of the Commission's rules, which requires that all documents filed with the Commission be signed by "at least one attorney of record,"[9] thereby defines counsel of record as only those attorneys signing such documents. We note, for example, that section 1.12 of the Commission's rules, although it does not use the phrase "counsel of record," requires the Commission to give notice of Commission action to attorneys that have "*appeared for*, submitted a document on behalf of or been otherwise designated by a person."[10] As GTE points out, Steven G. Bradbury from Kirkland & Ellis, and Scott Flick and Mark Schechter from Howrey & Simon, have appeared before the Commission on behalf of GTE in *ex parte* meetings with staff in reference to the above-captioned application.[11] We conclude that, under the Commission's rules, making an *ex parte* appearance in a proceeding is sufficient action to qualify an attorney as "counsel of record" for the purposes of viewing protected documents pursuant to the terms of the *Protective Order*.

4. Because we find that Messrs. Bradbury, Flick, and Schechter are counsel of record for GTE, and therefore permitted to inspect confidential information submitted by WorldCom and MCI, we conclude that their "partners, [and] associates" may view the protected material "to the extent reasonably necessary to render professional services in this proceeding."[12] GTE claims that John Frantz, an associate of Mr. Bradbury at Kirkland & Ellis, and James Olson, a partner of Messrs. Flick and Schechter from Howrey & Simon, "have been involved in GTE's analysis of the WorldCom/MCI merger, and their assistance is necessary to allow Messrs. Bradbury, Flick, and Schechter 'to render professional services in this proceeding.'"[13] Although minimal, we find that this showing is sufficient to permit Messrs. Frantz and Olson to inspect confidential information in the instant proceeding. We note, however, that, in the future, we expect a more detailed demonstration of how the assistance of "partners, associations, secretaries, paralegal assistants, and employees of such counsel" is "*reasonably necessary* to render professional services."[14]

5. GTE does not, in its filing, make any objections to the denial of access to two of GTE's in-house counsel, Richard W. Stimson and C. Daniel Ward. Because WorldCom and MCI claim that these in-house counsel are actively engaged in competitive decision-

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[9] 47 C.F.R. § 1.52.

[10] 47 C.F.R. § 1.12 (emphasis added).

[11] GTE's Response to Joint Opposition to Disclosure of Stamped Confidential Documents at 5-6 (filed June 24, 1998) (GTE Response).

[12] *Protective Order* at 1-2.

[13] GTE Response at 8.

[14] *Protective Order* at 1-2 (emphasis added).

making for GTE and GTE does not refute this claim, we agree with WorldCom and MCI that these two attorneys should be denied access to the confidential information.

6. We note that WorldCom and MCI do not object to the disclosure of confidential information to several other in-house attorneys for Bell Atlantic who signed Acknowledgements of Confidentiality. Similarly, WorldCom and MCI do not object to disclosing confidential information to the attorneys from Wiley, Rein & Fielding or several other in-house attorneys for GTE, all of whom signed Acknowledgements of Confidentiality. Moreover, we have found that the above-named attorneys from the law firms of Howrey & Simon and Kirkland & Ellis are eligible to review confidential documents.[15] Our decision today, therefore, does not deprive Bell Atlantic or GTE an opportunity to participate in this proceeding or unduly limit the Commission's ability to make a reasoned decision on the merits of this merger application.

7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 214, 309, and 310 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 309, and 310, WorldCom and MCI's Joint Objection to Disclosure of Stamped Confidential Documents filed June 12, 1998, IS SUSTAINED.

8. IT IS FURTHER ORDERED that WorldCom and MCI's Joint Objection to Disclosure of Stamped Confidential Documents filed on June 17, 1998, IS DENIED IN PART and SUSTAINED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Chief, Policy and Program Planning Division
Common Carrier Bureau

[15] We therefore need not address GTE's assertion that if the attorneys from Howrey & Simon and Kirkland & Ellis are not considered to be "counsel of record," they should still be permitted access because they are "outside consultants or experts retained for the purpose of assisting counsel in these proceedings." GTE Response at 9.